86-1030

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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COUNTY OF SANTA CLARA, Petitioner,

v.

JOE P. RAMIREZ, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

Section 402(a)(26) of the Social Security Act [Section 602(a)(26) of Title 42 of the United States Code] provides that as a condition of eligibility for aid to families with dependent children (AFDC), each applicant or recipient must assign to the state any rights to support the applicant has on his own behalf or on behalf of any other family member for whom the applicant is applying for aid and which have accrued at the time the assignment is executed.

Section 456 of the Social Security Act [Section 656 of Title 42 of the United States Code] provides that the support rights assigned to the state under section 402(a)(26) [42 U.S.C. § 602(a)(26)] shall constitute an obligation owed to the State by the individual responsible for support and that such an assigned debt is not released by a discharge in bankruptcy under Title 11.

The questions presented are:

1. Whether a California judgment for reimbursement of aid based on an underlying child support obligation rather than on a pre-existing order for support constitutes "a debt which is a child support obligation assigned to the state" under Section 456 of the Social Security Act for purposes of non-discharability in bankruptcy.

2. Whether under federal and California law the child's accrued rights to support are assigned for purposes of section 402(a)(26) of the Social Security Act whether or not one parent has a right to reimbursement from the other.

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JOSE P. RAMIREZ, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner, County of Santa Clara, respectfully prays that a writ of certioriori issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered on August 4, 1986. A timely petition for rehearing was denied on September 23, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported sub nom In re Ramirez at 795 F.2d 1494 (9th Cir. 1986) and is reprinted in Appendix A. The

denial of the petition for rehearing is reprinted in Appendix B.

The opinion of the Court of Appeals affirmed the judgment of the United States District Court for the Northern District of California entered on September 23, 1984. This opinion is unreported and is reprinted in Appendix C.

The opinion of the United States District Court affirmed the decision of the United States Bankruptcy Court, Northern District of California, entered on September 28, 1983. This opinion is unreported and is reprinted in Appendix D.

JURISDICTION

Plaintiff debtor Joe P. Ramirez invoked the jurisdiction of the Bankruptcy Court to determine dischargeability of a debt pursuant to Bankruptcy Rules 409 and 701(7). Petitioner County appealed the decision of the Bankruptcy Court to the United States District Court under Bankruptcy Rule 4001 and the decision of

the District Court to the United States Court of Appeals under 28 U.S.C. § 1291. The decision of the Court of Appeals was entered on August 4, 1986, and the denial of the petition for rehearing was entered on September 23, 1986.

The jurisdiction of this Court to review the decision of the United States Court of Appeals for the Ninth circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

United States Code, Title 11, Section 523(a)(5)(A):

> "(a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt -
>
> (5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce

decree, or property settlement agreement, but not to the extent that -

> 'A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act);
>
> . . . ."

The statute was amended in 1984:

> The phrase "or other order of the Court" was inserted in section (5) following "divorce decree", and added to subparagraph (A) was the phrase "or any such debt which has been assigned to the federal government or to a state, or any political subdivision of a state."

United States Code, Title 42, Section 602(a)(26)(A):

"A state plan for aid and services to needy families with children must . . . (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required -

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed, . . ."

United States Code, Title 42, Section 656:

> "(a)(1) The support rights assigned to the State under section 602(a)(26) of this title shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be

collectible under all applicable State and local processes.

(2) The amount of such obligation shall be -

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs (1)(A) and (B).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a

discharge in bankruptcy under Title 11." California Welfare and Institutions Code, Section 11477(a):

> "As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall:
>
> (a) Assign to the county any rights to support from any other person such applicant may have in their own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at the time such assignment is made. Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state. If support rights are

assigned pursuant to this subdivision, the assignee may become an assignee of record by the district attorney or other public official filing with the court clerk an affidavit showing that an assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record."

California Welfare and Institutions Code, Section 11350:

> "In any case of separation or desertion of a parent or parents from a child or children which results in aid under this chapter being granted to such family, the noncustodial parent or parents shall be obligated to the county for an amount equal to:
>
> (a) The amount specified in an order for the support and

maintenance of such family issued by a court of competent jurisdiction; or in the absence of such court order,

(b) The amount of aid paid to the family during such period of separation or desertion limited by such parent's reasonable ability to pay during that period in which aid was granted; and

(c) Such obligation shall be reduced by any amount actually paid by such parent during such period of separation or desertion for the support, and maintenance of such family.

The district attorney shall take appropriate action pursuant to this section in the superior court of the county which provided aid under this chapter.

The court may order the defendant to pay the county attorney fees and court

costs, based on such defendant's reasonable ability to pay, in any proceeding brought by the county pursuant to this section.

In making the determination of the defendant's reasonable ability to pay attorney's fees and court costs under this section, the court shall be limited to the following considerations:

(a) The wealth and income of the defendant;

(b) The current ability of the defendant to earn;

(c) The age of the defendant."

California Civil Code, Section 196 provides:

"The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective

earnings or earning capacities of the parents."

Prior to 1980, the section provided that the parent entitled to custody of a child must give him support and education and that if a father cannot provide adequate support, the mother must assist him.

California Civil Code, Section 208:

Section 208 provides:

"A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause."

Added in 1982 is the provision:

"Nothing in this section shall be construed so as to relieve the parent of the

obligation to support the child during any period in which the state, county or other governmental entity furnishes support for the child."

STATEMENT OF THE CASE

On July 12, 1982, debtor and plaintiff Joe P. Ramirez (Jose Presiado Ramirez) filed in the United States Bankruptcy Court, Northern District of California, a "Complaint to Determine Dischargeability of a Debt" pursuant to Bankruptcy Rules 409 and 701(7) against the County of Santa Clara, defendant. (DOC. NR. 1; ER 1-2.)[1/] The complaint alleged that on April 2, 1982, plaintiff filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, that the County of Santa Clara, State of California, Family Support Trustee was a creditor of plaintiff

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1. Excerpts of the Record are cited as ER; the docket numbers are those in the District Court's file of the documents from the bankruptcy court. These are contained in the Clerk's Record on Appeal in the Ninth Circuit Court of Appeals, No. 1 (CR).

in the sum of $14,825.00 plus interest from the date of the judgment (April 14, 1981), that the judgment was based on Welfare and Institutions Code section 11350 and represented expenditures made between November 1977 and January 1981, and that the debt was founded on a claim from which a discharge in bankruptcy would be a relief.2/

On October 4, 1982, defendant County's Notice of Motion and Motion to Permit Late Filing of Answer and Answer (ER 3-4) were filed (DOC. NR. 6) and on November 1, 1982, plaintiff filed a statement of no opposition. (DOC. NR. 10) The Court's order of dismissal through plaintiff's

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2. The County had filed a complaint against Ramirez on September 4, 1980, seeking reimbursement for aid and ongoing support. After Ramirez failed to appear or answer; a default judgment was entered ordering him to pay $250.00 per month child support commencing January 1, 1981, and to pay the county $14,750.00 representing the amount of AFDC paid Mrs. Ramirez between November 1977 and January 1981. (See opinion of Bankruptcy Court, Appendix D at 3).

default was filed on November 24, 1982, and set aside on stipulation of the parties on March 4, 1983 (DOC. NRS. 12, 13, 15).

On April 25, 1983, defendant County filed Points and Authorities in Support of Motion for Summary Judgment (DOC. NRS. 17-19). Plaintiff debtor filed his Points and Authorities in Support of Motion for Summary Judgment on May 11, 1983, (DOC. NRS. 21-23) and defendant County filed a response on May 23, 1983 (DOC. NR. 26).

Hearing was held on June 3, 1983, and on September 28, 1983, the Court filed its order discharging the debt and granting plaintiff's motion for summary judgment (DOC. NRS. 27-28; ER 5-15; App. D).

In ruling that the debt in this case was dischargeable in bankruptcy, the bankruptcy court first found that 11 U.S.C. section 523(a)(5)(A) did not apply because the debt in question here was not connected to a decree or agreement. (App. D at 4). This section states that alimony and child

support debts owed to a spouse or child pursuant to a separation agreement, divorce decree, or property settlement and assigned pursuant to 42 U.S.C. section 602(a)(26) are not dischargeable in bankruptcy.

The bankruptcy court then found that 42 U.S.C. section 656(b) established a separate basis for non-dischargeability (App. D at 8-9). Section 656(b) provides that a debt which is a child support obligation assigned to a state under section 602(a)(26) is not released by discharge.

Despite this, the bankruptcy court discharged the debt because it found that the obligation arose under California Welfare and Institutions Code section 11350, not under 42 U.S.C. section 602(a)(26) or its state counterpart, California Welfare and Institutions Code sectin 11477:

"To arise under section 11477, plaintiff's debt must have accrued before Mrs. Ramirez applied for AFDC, since 11477 requires a recipient to assign only those rights to support 'which have accrued at the time such assignment is executed.' Under California law, however, a wife may sue her husband for prospective support only; a spouse has no right to sue for reimbursement of support furnished a child in the absence of a court order or agreement between the parties. Amie v. Superior Court of Riverside County, (1979) 99 Cal.App.3d 421, 425, 160 Cal. Rptr. 271, 272-273.

"Thus at the time Mrs. Ramirez applied for AFDC, she assigned to defendant merely a

right to seek a court order establishing support, and not a right to reimbursement for past support. Consequently, plaintiff's debt to the State arose by operation of Cal. Welf. & Inst. Code section 11350, rather than by his wife's assignment pursuant to Cal. Welf. & Inst. Code section 11477 or 42 U.S.C. section 602(a)(26)." (App. D. at 9).

The County filed a Notice of Appeal to the District Court on October 4, 1983 (DOC. NR. 29).

The United States District Court for the Northern District of California issued its opinion and Judgment on October 1, 1984, affirming the order of the bankruptcy court (CR 9, 10; ER 16-25, App. C).

The District Court, found that dischargeability was controlled exclusively by section 523(a)(5)(A) of 11 U.S.C. stating:

"For a debt to be dischargeable under this section it must be:

(1) Owed to a spouse, former spouse, or child of the debtor; (2) be in connection with a separation agreement, divorce decree, or property settlement; and (3) the debt must be assigned to another entity pursuant to 42 U.S.C. section 602(a)(26)." (ER 22; App. C at 7).

The court found that none of the three requirements was met and thus found that Ramirez' debt was discharged.

In finding that the debt was not owed to the spouse or child or assigned to the county pursuant to section 602(a)(26), the District court also relied on Amie v. Superior Court, supra. While recognizing that Amie was not "factually on all fours" with this case, the Court found principles of law stated in the case to be applicable - that neither the custodial parent or the child had a right to reimbursement -- and therefore, there were no accrued rights to be assigned. (App. C at 9-11).

Notice of Appeal from the District Court decision was filed by the County of Santa Clara on October 23, 1984 (CR 12; ER 26).

The District Court order was affirmed by the United States Court of Appeals for the Ninth Circuit on August 4, 1986, with one judge dissenting. The Court of Appeals agreed with both lower courts that the debt was not excepted from discharge under 11 U.S.C. § 523(a)(5)(A) because it was not incurred in connection with a separation agreement or dicorce decree (795 F.2d at 1496-1497; App. A at 7. The Court then considered 42 U.S.C. 656(b) and found (agreeing with the bankruptcy court) that this section excepted from discharge a debt which is a child support obligation assigned to a State under 42 U.S.C. § 602(a)(26), which requires every applicant for aid to "assign the State any rights to support . . . which have accrued at the time the assignment is executed."

The Court recognized that this requirement was implemented by California Welfare & Institutions Code § 11477. (795 F.2d at 1497; App. A at 8-9.

The Court then considered the question of whether Mr. Ramirez' debt to the County arose from Mrs. Ramirez' assignment of accrued rights to support and, agreeing with both lower courts, found that it did not. The Court of Appeals considered and interpreted California Welfare and Institutions Code section 11350 and Amie v. Superior Court 99 Cal.App.3d 421, 160 Cal. Rptr. 271 (1979) a decision of the California Court of Appeal, to find that Mrs. Ramirez had no accured rights and thus the debt fell outside the scope of 42 U.S.C. sections 656(b) and 602 (a)(26). 795 F.2d at 1497-1498; App. A at 9.

The Court of Appeals distinguished In re Stovall, 721 F.2d 1133 (7th Cir. 1983) and disagreed with Oregon v. Richards, 45

B.R. 811 (D. Or. 1984). Finally, the Court concluded that "equity" required discharge.

In dissent, Circuit Judge Ferguson stated:

> "The question before us is whether, in the absence of a court support order, Mrs. Ramirez had any rights to child support in her own behalf or in behalf of her children that had accrued at the time she applied for and received AFDC. If she did, then the child support obligation was assigned to the County under section 602(a)(26) of Title 42 of the United States Code and is not dischargeable by virtue of section 656(b) of the same Title. Because it is clear that under California law a child has a right to support that can be assigned, and because the legislative history of sections

602(a)(26) and 656(b), as well as the plain language of section 656(a), indicate that the rights to be assigned under section 602(a)(26)include child support obligations that have not yet been reduced to the form of a judgment, order, or agreement, I respectfully dissent." (795 F.2d at 1499; App. A (dissent) at 1.)

* * *

"In addition to ignoring clear congressional intent, the majority's opinion creates a conflict with other circuit decisions. The Seventh Circuit, when addressing the same issue decided in this appeal, concluded that such a debt was nondischargeable in bankruptcy. In re Stovall, 721 F.2d 1133 (7th Cir. 1983). In that case, Mrs. Stovall received AFDC payments beginning in 1974. Id. at 1134. No formal order was entered until 1975, id., but the court held that no AFDC

payments were dischargeable in bankruptcy, including those prior to the order, id. Thus, the majority is incorrect when it states that Stovall found nondischargeable only those amounts arising pursuant to a court order. Stovall is, in that respect, indistinguishable from the case before us. In light of Congress' clear intent, I would join with the Seventh circuit and reverse the district court." (795 F.2d at 1501; App. A (dissent) at 10-11.)

The County's timely petition for rehearing was denied on September 23, 1986. (See App. B.

REASONS FOR GRANTING THE WRIT

A JUDGMENT FOR REIMBURSEMENT OF AID IN THE ABSENCE OF A PRIOR COURT ORDER IS BASED ON THE CHILD'S ACCRUED RIGHTS TO CHILD SUPPORT AND CONSTITUTES A DEBT WHICH IS AN OBLIGATION ASSIGNED TO THE STATE FOR PURPOSES OF DETERMINING NON-DISCHARGEABILITY IN BANKRUPTCY UNDER FEDERAL AND STATE LAW.

In ruling that the debt to the state established by the California judgment in this case was dischargeable in bankruptcy,

the Ninth Circuit disregarded the intent of Congress to achieve maximum reimbursement of AFDC, misinterpreted California law which follows Congressional intent, established a conflict with the Seventh Circuit and other lower courts which have considered the issue with consequent disparate treatment of debtors and misconstrued its function in achieving equity. This case has enormous financial significance for local, state and federal governments. In California and in any state having a statute similar to that of California, as authorized by Congress, a significant portion of AFDC reimbursement comes from orders obtained in cases where, for various reasons, the custodial parent has not obtained a court order for support prior to receiving public assistance. The federal government shares in this reimbursement in proportion to its share of

the AFDC payment (about 50% in Califoria).[3/]

A. The federal statutes and the intent of Congress.

The court held the father's reimbursement debt fell outside rights assignable under 42 U.S.C. § 602(a)(26) because there was no court order at the time the mother assigned child support

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3. Although Santa Clara County does not have statistics on the amount of reimbursement potentially at risk, they estimate that 65-70% of their welfare reimbursement case load involves cases where no count order had been entered until after the family went on welfare. In San Francisco County, which does have some statistics, 430 such reimbursement judgments were established during the last twelve months in a total amount of $1,763,000. All of this amount, therefore, is potentially at risk. Such cases represent about 28 percent of the reimbursement arrearages established. The amount actually collected in AFDC arrearages in California in 1985-1986 is estimated to be about $91,000,000 (the total AFDC collection was $183,763,000). Using the San Francisco percentage as generally applicable, at least $25,500,000 per year is potentially at risk for discharge in bankruptcy in California alone. Since all of the judgments obtained are not collected in any one year the actual at risk amount is substantially greater.

rights to the County. In so holding, the court overlooked the plain meaning of 42 U.S.C. § 602(a)(26) and 42 U.S.C. § 656(a)-(b) and disregarded pertinent legislative history.

Section 602(a)(26)(A) provides that each applicant or recipient of AFDC benefits as a condition of eligibility is required:

> "to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed . . .."

Section 656(a) provides that a debt which is a child support obligation assigned to a State under section 602(a)(26) is an

obligation owed to the State even where there is no court order:

"(a)(1) The support rights assigned to the State under section 602(a)(26) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

"(2) The amount of such obligation shall be -

"(A) the amount specified in a court order which covers the assigned support rights, or

"(B) <u>if there is no court order</u> an amount determined

by the State in accordance with a formula approved by the Secretary, . . ."
(Emphasis added.)

Section 656(b) states that a child support debt assigned under section 602(a)(26) is not dischargeable in bankruptcy. The fact that the County utilized a statute (California Welfare & Institutions Code section 11350) rather than bringing an action under the guise of Mrs. Ramirez's assignment of support rights is a technical distinction that does not affect dischargeability. Oregon v. Richards 45 B.R. 811, 816 (D. Ore. 1984). See also, Williams v. Dept. of Social & Health Services 529 F.2d 1264, 1270 (9th Cir. 1976) ("a debt's underlying nature, rather than its form, is the controling concern in determining whether it is discharged.")

In addition to the plain language of the statutes themselves, their legislative history clearly establishes the Congressional intent to include child

support obligations which have not yet been reduced to a judgment, order, or agreement among those rights assignable under section 602(a)(26). See S. Rep. No. 1356, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 8133, 8152. The Senate Committee Report expressly stated:

> "The support obligation would become a debt owed by the absent father to the State. The amount of this debt would be determined by a court order if one were in existence. In the absence of a court order the amount of the obligation would be an amount determined by the State in accordance with a formula approved by the Secretary of HEW. Also, a provision has been included to assure that the rights of the wife and child are not discharged in bankruptcy merely because the support

obligation is a debt to the State." Id. at 8153 (Emphasis added).

When Congress reinstated section 656(b) in 1981[4/] the Committee Report stated:

> "The committee amendment would . . . reinstate a provision of the Social Security Act, previously in effect, declaring that a child support obligation assigned to a State as a condition of AFDC eligibility is not discharged in bankruptcy. The committee believes that a parent's obligation to support his child is not one that should be allowed to be discharged by filing for bankruptcy, and that a child support obligation assigned

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4. Congress repealed section 656(b) in 1978. Pub. L. No. 95-598, sec. 328, 92 Stat. 2549, 2679 (1978).

to a State as a condition of AFDC eligibility should not be subject to termination in that way.
S. Rep. No. 139, 97th cong., 1st Sess. 523, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 789-90.

In view of the clear legislative history and plain language of the above referenced statutes, Mr. Ramirez' obligation was "precisely the sort of debt intended to fall within the non-dischargeability provision of section 656(b)." Oregon v. Richards 45 B.R. 811, 816 (D. Ore. 1984). Cf., Kelly v. Robinson, ___ U.S. ___, 47 C.C.H. S.Ct. Bull. p. B209 (Nov. 12, 1986)

B. California Law.

Section 11350 of the California Welfare and Institutions Code provides that in cases where aid is granted, the non-custodial parent is obligated to the county for an amount equal to (a) the amount

specified in a court order or (b) the amount of aid paid, limited by the parent's reasonable ability to pay during the period and (c) that the obligation is reduced by any amount actually paid. Thus, the statute is geared to the underlying obligation to the child, whether by court order or statute, and the parent's efforts to fulfill this obligation are considered in determining the amount the county can recover.

This section, pursuant to which the County obtained the judgment in this case, does not establish a new right or duty. It establishes the county's right to sue on the existing support obligation and sets forth how the amount of the obligation is to be established.

Welfare and Institutions Code section 11477, in the language of its federal counterpart, establishes that the recipient of aid assigns to the state "any rights to support" the applicant has in his own

behalf or on behalf of any other family member "and which have accrued" at the time of the assignment (emphasis added).

Instead of discussing what "rights to support" existed or which had accrued at the time, the Court of Appeals, as well as the lower courts, focused on the mother's right to sue which they deemed to be for prospective support only and not for reimbursement. However, in the words of the statute it is the child's right to support which is assigned; the right of the state to sue for this accrued support is established by another statute, whether or not the mother has a similar right. The state's right to reimbursement exists only because the absent parent has had a continuing duty to support the child and the child's right has been assigned. It should be noted that under the bankruptcy statute "debt" is defined as a liability on a claim; "claim" is a right to payment

whether or not the right is reduced to judgment. 11 U.S.C. section 101 (4), (11).

In ruling on the issue, the Court of Appeals relied on Amie v. Superior Court, supra, for the principle of California law that a spouse could not sue for reimbursement of support furnished a child in the absence of a court order or agreement. The Court thus confused the right to reimbursement of the parent or the child with the underlying obligation for support. It is the latter which is assigned to the county and on which the county's right to reimbursement is based. The statutes do not speak to the right of the mother to reimbursement but rather to the right of the child to support.

Parental liability for support is ancient in origin and for a long time has been statutory in California. See County of Alameda v. Kaiser (1965) 238 Cal.App.2d 815, 817-818, 48 Cal. Rptr. 343, 345. The child support obligation continues

notwithstanding lack of custody and is unaffected by any agreement between the parties. Armstrong v. Armstrong (1976) 15 Cal.3d 942, 947, 126 Cal. Rptr. 805, 807, 544 P.2d 941, 943. A decree awarding custody or support does not abrogate either parent's duty of support; Civil Code section 196 imposes an obligation on both parents. Section 208 of the Civil Code does not abrogate the duty of the parent to the child. Carr v. Marshman (1983) 147 Cal.App.3d 1117, 195 Cal. Rptr. 603. Section 208 was the basis of the statement in Amie v. Superior Court of Riverside County, supra, 99 Cal.App.3d at 425, 160 Cal. Rptr. at 272-273, that a spouse has no right to sue for reimbursement of support furnished a child in the absence of a court order or agreement between the parties. However, whether or not the mother can get reimbursement, the child has a continuing right of support. Both parents are obligated to the child and to the county

for the child's support, but not to each other. Crookham v. Smith (1977) 68 Cal.App.3d 773, 777, 137 Cal. Rptr. 428, 431. It should be noted that a "stranger" also has the right to compensation under section 208. Amie involved only the question of a statute of limitations on Welfare and Institutions Code section 11350 actions and held that being subrogated to the right of the child to support did not toll the statute as to the county. That a statute of limitations is imposed on the exercise of the right to reimbursement based on this underlying support obligation does not change the nature of the right to which the county is subrogated.

Moreover, the Amie Court held that the county was barred from utilizing the California tolling statute for minors because the assignment of the child's right of action destroyed the purpose of the tolling statute and it was thus inapplicable. Therefore, finding that an

assignment took place was essential to the Court's decision.

While the Court of Appeals recognized that the child's rights as well as the mother's are assigned, it discussed only the mother's right to collect, not the child's right to support. The Court cited In re Marriage of O'Connell (1978) 80 Cal.App.3d 849, 855, 146 Cal. Rptr. 26, 30 for the proposition that absent a decree ordering payment, the parent with custody has full responsibility for the support of the child. 795 F.2d at App. p. 1497; App. A at 11-12. This is a correct statement of California law only in the narrow sense that the custodial parent cannot collect reimbursement from the other parent. It incorrectly states California law as used by the Court because it overlooks the continuing obligation of the non-custodial parent and the child's right to support.

First, O'Connell goes on to describe the child's rights (80 Cal.App.3d at page 856, 147 Cal. Rptr. at page 30):

> "A child has important rights of his own. Thus, he can maintain an action against a parent for support, despite the appointment of a guardian and denial of custody to that parent. (Fagan v. Fagan (1941) 43 Cal.App.2d 189, 191 [110 P.2d 520]). Nor is a father's duty of support extinguished by a dissolution decree awarding custody to the mother which does not award support. (Kresteller v. Superior Court (1967) 248 Cal.App.2d 545, 548-549 [56 Cal.Rptr. 771].) While parents may be bound by a mother's agreement releasing a father from liability for support of the children, neither the court nor

the children are bound by the agreement. (Elkind v. Byck (1968) 68 Cal.2d 453, 457 [67 Cal.Rptr. 404, 439 P.2d 316]; Hunter v. Hunter (1959) 170 Cal.App.2d 576, 583 [339 P.2d 247]; Allen v. Allen (1956) 138 Cal.App.2d 706, 708 [292 P.2d 581].) The single most important consideration in an action for support is the need of the child. (Bierl v. McMahon (1969) 270 Cal.App.2d 97, 102 [75 Cal.Rptr. 473].) An emancipation of the minor by agreement with the parent does not terminate the right of the minor to support from the parent. (County of Alameda v. Kaiser (1965) 238 Cal.App.2d 815, 817 [48 Cal.Rptr. 343].) The parent of a minor committed to an industrial school by the juvenile court can be ordered to reimburse the county for the support of the child. (Svoboda v. Superior Court (1923) 190 Cal. 727, 731 [214 P. 440].) The appointment of a guardian does not prevent the court from ordering the parent to provide support for the child.

(Evans v. Evans (1908) 154 Cal. 644, 646 [98 P. 1044].) These cases tell us that in disputes involving the obligation for support of minor children, the right of custody and control is an important factor, but the welfare and need of the minor child is even more important."

Second, O'Connell relies on Blair v. Williams (1927) 86 Cal.App. 676, 261 P. 539, which in turn relies on Lewis v. Lewis (1917) 174 Cal. 336, 339, 163 P. 42, 43-44, which can no longer be considered the law in California. While not expressly overruled by the California Supreme Court, it has been limited, distinguished and ignored.[5/] See, e.g. Krog v. Krog (1948) 32 Cal.2d 812, 817, 198 P. 2d 510, 512-513,

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5. Lewis relied on Civil Code section 196 which was changed in 1980 to provide equal responsibility for support. Prior to its amendment, section 196, in addition to requiring the parent with custody to provide support, made the father primarily responsible. See, Chapin v. Superior Court (1966) 239 Cal.App.2d 851, 855-856, 49 Cal. Rptr.199, 202.

(the court may order support payments in divorce action and in any event no agreement of parent can bar child's rights); Nunes v. Nunes (1964) 62 Cal.2d 33, 39, 41 Cal. Rptr. 5, 9, 396 P. 2d 37, 41 (court can order either or both parents to support child). In Kresteller v. Superior Court of San Francisco (1967) 248 Cal.App.2d 545, 547-548, 56 Cal. Rptr. 771, 773 the court expressly declined to follow Lewis on the basis that subsequent case and statute law had overruled it.

Thus, O'Connell cannot be read to distinguish Crookham which correctly states the law of California: both parents are liable to the child and to the county even if not to each other.

In short, there is no California law to support the Court's conclusion, and ample authority to the contrary, disregarded by the Court of Appeals.

C. Conflict with the United States Court of Appeals for the Seventh Circuit.

The Court's opinion creates a conflict with another circuit's decision. The Seventh Circuit, addressing the same issue in In re Stovall [721 F.2d 1133 (7th Cir. 1983)], held that a debt which is a child support obligation assigned to a State is non-dischargeable in bankruptcy. In Stovall, the mother received AFDC payments beginning in 1974. Id. at 1134. Although no formal order was entered until 1975, the court held that no AFDC payments were dischargeable in bankruptcy, including those made prior to the order. Ibid. In this respect, Stovall is indistinguishable from the present case. This conflict results in disparate treatment of debtors in these circuits even though the debtors may be subject to similar state law obligations.

D. Equity.

The Court of Appeals cites equitable considerations in support of its ruling stating that its overriding goal is to leave Mr. Ramirez in a position to support his children. While we appreciate and share the Court's concern, Congress has made the determination that equity is best served and the goal of family responsibility best met if child support obligations are not discharged in bankruptcy. The purpose of Title IV-D is to reimburse the expenditure of state and federal funds for AFDC as well as to provide support for children to reduce welfare payments and promote the welfare of children.

By holding such debts dischargeable, the Court has encouraged bankruptcy proceedings and has made uncollectible in California and other states substantial sums of money owed to local, state, and federal governments.

Santa Clara County agrees, that the amount of the obligation in this case, established by default, is too large. The County is willing to negotiate the total amount due as well as the amount to be paid each month. In making its evaluation of the equities of the situation, the Court of Appeals also overlooked California law which places limits on the total amount that can be withheld and the fact that Mr. Ramirez' financial situation has not necessarily remained the same.

CONCLUSION

The opinion of the Court of Appeals in this case clearly disregards both federal and state law in holding this child support debt dischargeable in bankruptcy. This rule will have a significant financial impact in California and in any other state with a similar reimbursement law. We respectfully request that certiorari be granted to review the Court of Appeals decision and find that such a debt, based

on the underlying child support obligation, was intended by Congress to receive the same treatment under bankruptcy laws as a child support obligation based on a pre-existing court order. Because the issue is so clear, we suggest that this court may wish to consider a summary reversal without the necessity for further briefing or oral argument.

Dated: November 26, 1986

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APPENDIX A

OPINION

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	NO. 84-2612 D.C. # CV84-0719 SC
COUNTY OF SANTA CLARA, Appellant, v. JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ, Appellees.	OPINION

Appeal from the United States District Court for the Northern District of California S. Conti, District Judge, Presiding, Argued and Submitted August 12, 1985 San Francisco, California

Before: TANG, and FERGUSON, Circuit Judges, and GRAY,* District Judge

TANG, Circuit Judge:

The County of Santa Clara (the "County") appeals from the district

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* Honorable William P. Gray, Senior United States District Judge, for the Central District of California, sitting by designation.

court's affirmance of the bankruptcy court's decision that a parent's debt to the County for reimbursement of Aid for Families with Dependent Children ("AFDC") payments made to his spouse for the support of their two minor children is dischargeable in bankruptcy. The County made the AFDC payments during a period when Mr. Ramirez was under no support order nor any dissolution decree or separation agreement requiring support. We affirm.

I. BACKGROUND

Jose and Yolanda Ramirez were married in February 1973 and subsequently parented two children. In July 1977 they separated, but without a dissolution decree or court order for alimony or child support.

In December 1979, Mrs. Ramirez requested AFDC from the County. As a condition of eligibility for aid she was

required to assign to the County any accrued rights to support from Mr. Ramirez which she had in behalf of herself or her children. Cal. Welf. & Inst. Code. § 11477(a); 42 U.S.C. § 602(a)(26).

In September 1980, the County filed an action against Mr. Ramirez pursuant to section 11350 of the California Welfare and Institutions Code seeking reimbursement for the AFDC benefits the County had provided Mrs. Ramirez and her children. Mr. Ramirez failed to appear or answer. A default judgment in the sum of $14,750 was entered in April 1981 against Mr. Ramirez for AFDC payments to Mrs. Ramirez between November 1977 and January 1981. (There is no explanation why the judgment covered AFDC payments beginning in November 1977 when Mrs. Ramirez did not seek AFDC until December 1979.) The court also ordered Mr.

Ramirez to pay $250 a month child support to Mrs. Ramirez commencing January 1, 1981.

After entry of judgment, the County began garnishing Mr. Ramirez's wages for reimbursement of AFDC benefits. In April 1982, Mr. Ramirez filed a petition for Chapter 7 bankruptcy. Mr. Ramirez owned no real property, possessed $1,317 worth of personal property, and earned less than $17,000 during the two years preceding his bankruptcy. In his Chapter 7 petition Mr. Ramirez listed four creditors: one secured creditor, to whom he owed $563.00; an attorney, to whom he owed $226.58; Mrs. Ramirez, to whom he owed $3,750.00 for child support (for the fifteen months since the court support order); and the County, to which he owned $14,825.00 under the judgment for AFDC reimbursement. On April 16, 1982, the bankruptcy court granted Mr.

Ramirez a discharge of all dischargeable debts.

On July 12, 1982, Mr. Ramirez filed a complaint in bankruptcy court to determine the dischargeability of the judgment debt to the County for AFDC reimbursement. The bankruptcy court entered an order discharging the debt and granting Mr. Ramirez's motion for summary judgment.

The County appealed to the district court. The district court concluded that the debt to the County for reimbursement of AFDC payments was dischargeable, and affirmed the decision of the bankruptcy court. The County timely appeals.

II. STANDARD OF REVIEW

This appeal involves the interpretation of federal and California law and is reviewable de novo. In re McLinn, 739 F.2d 1395, 1397-98 (9th Cir.

1984) (en banc); United States v. McConney, 728 F.2d 1195, 1201 (9th Cir.) (en banc), cert. denied, 105 S.Ct. 101 (1984).

III. DISCUSSION

This case presents conflicting policies of bankruptcy law, which ordinarily permits the dischargeability of debt, and family law, which obligates parents to support their minor children. Mr. Ramirez concedes a currently existing and continuing obligation to pay $250 a month for direct support of his children, and that this obligation is not dischargeable in bankruptcy. He seeks only to have discharged his $14,750 judgment debt to the County for AFDC benefits paid to his spouse. He asserts that discharge of his past debt will enable him to meet current support obligations to his children.

11 U.S.C. § 523(a)(5)(A)

Ordinarily, all debts are dischargeable in bankruptcy. Oregon v. Richards, 45 B.R. 811, 812 (D. Or. 1984). The bankruptcy code, however, provides an exception to this general rule in 11 U.S.C.§ 523(a)(5)(A). It does not permit a debtor to discharge in bankruptcy any debt

> to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such a spouse or child, in connection with a separation agreement, divorce decree, or property settlement agreement, but not to the extent that--
>
> (A) such a debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act [42 U.S.C. § 602(a)(26)]); ...

11 U.S.C. § 523(a)(5)(A) (emphasis added). In other words, a debt is not dischargeable if (1) it was incurred in connection with a separation agreement

or divorce decree, and (2) it was assigned pursuant to 42 U.S.C. § 602(a)(26).

The County contends that the debt at issue here was assigned pursuant to 42 U.S.C. § 602(a)(26), as implemented by Cal. Welf. & Inst. Code § 11477(a). The County's contention fails, however, because the first requirement for nondischargeability was not met. Under the plain language of section 523(a)(5)(A), Mr. Ramirez's debt was dischargeable because it did not arise from a "separation agreement, divorce decree or property settlement." This interpretation was the basis of the decision of the bankruptcy and district courts. Both courts relied on In re Leach, 15 B.R. 1005, 1008 (Bankr. D. Conn. 1981), which held that a debt to the state for AFDC reimbursement which did not arise in connection with a

separation agreement, divorce decree or property settlement is not excepted from discharge under section 523(a)(5)(A).

42 U.S.C. 656(b)

The County also argues that 42 U.S.C. § 656(b) excepts Mr. Ramirez's debt to the County for reimbursement of AFDC payments from discharge. Section 656(b) provides:

> A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under Title 11.

Mr. Ramirez's debt would thus be excepted from discharge if it had been assigned to the County under 42 U.S.C. § 602(a)(26). That section requires state programs for aid to dependent families to provide that as a condition of eligibility for aid, each applicant must "assign the State any rights to support . . . which <u>have accrued</u> at the

time the assignment is executed." (emphasis added) This requirement is implemented by the State of California in a statute with identical language. Cal. Welf. & Inst. Code § 11477(a)(West 1980).

Our inquiry, then, must focus on whether Mr. Ramirez's debt to the County arose from Mrs. Ramirez's assignment of accrued rights to support and is thus nondischargeable under 42 U.S.C. § 656(b).[1/] We conclude, as did both

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1. We do not find In re Leach, 15 B.R. 1005 (Bankr. D.Conn. 1981), and In re Esposito, 31 B.R. 872 (Bankr. D.Conn. 1983) to be helpful in resolving this question. That court reasoned, as do we, that a debt for AFDC reimbursements is not excepted from discharge by 11 U.S.C. § 523(a)(5)(A) when it is not incurred in connection with an agreement or order. Leach, 15 B.R. at 1008; In re Esposito, 31 B.R. at 875. Although both decisions held the obligations there at issue nondischargeable because of the operation of 42 U.S.C. § 656(b), id., neither opinion addressed the significance of § 602(a)(26)'s requirement that assignable rights are those which have accrued at the time of assignment.

courts below, that Mr. Ramirez's debt to the County did not arise from Mrs. Ramirez's assignment of accrued rights because our analysis reveals that Mrs. Ramirez had no accrued rights.

The determination of child support rights is a matter of state statutory and common law. Under California law, "absent a dissolution decree ordering support payments, the parent with custody bears full responsibility for the support of the child." In re Marriage of O'Connell, 80 Cal.App.3d 849, 855, 146 Cal. Rptr. 26, 30 (1978).[2/] "[A] mother cannot

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2. Indeed, Section 208 of the California Civil Code provides:

> A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation.

claim reimbursement for money paid out in support of a child prior to an order of the court directing the father to pay support to meet the current needs of the child." Amie v. Superior Court, 99 Cal.App.3d 421, 425, 160 Cal. Rptr. 271, 272-73 (1979)(quoting Bierl v. McMahon, 270 Cal.App.2d 97, 105, 75 Cal. Rptr. 473, 475 (1969)). See also In re Marriage of Koppelman, 159 Cal.App.3d 627, 633-34, 205 Cal. Rptr. 629 (1984); Dimon v. Dimon. 40 Cal.2d 516, 524, 254 P.2d 528 (1953).

In Amie, 99 Cal.App.3d at 425, 160 Cal. Rptr. at 272, the County sought reimbursement of public assistance funds based on the theory that the right to reimbursement is ancient and well-established. The Amie court held, however, that noncustodial parents had never been required to reimburse either their spouses or their children in the

absence of an agreement or order. Id. The court further noted that although a minor child could sue for support in his or her own name, a child had never attempted to obtain reimbursement from a noncustodial parent for past support. Id. at 426, 160 Cal. Rptr. at 273. Thus, if Mrs. Ramirez, instead of the County, had provided the funds necessary to raise her children after her separation from their father until the state court support order in 1980, neither Mrs. Ramirez nor her children would have any right to be reimbursed for any part of the expenditure. Id. at 425-26, 160 Cal. Rptr. at 273.[3/]

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3. The dissenting opinion insists that child support obligations exist regardless of a dissolution decree. While this is true, it does not help to answer the qustion of whether Mrs. Ramirez had accrued, and therefore assignable, rights when she applied for AFDC benefits. Crookham v. Smith, 68
(FOOTNOTE 3 CONTINUED NEXT PAGE)

The Seventh Circuit's treatment of a similar issue in In re Stovall, 721 F.2d 1133 (7th Cir. 1983), may be distinguished from the case before us. In In re Stovall, the noncustodial parent was obliged pursuant to a divorce decree to pay $80.00 per week in child support. At the time of the separation, which occurred approximately a year prior to the divorce, Mrs. Stovall applied for and

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(FOOTNOTE 3 CONTINUED HERE)
Cal.App.3d 773, 777, 137 Cal. Rptr. 428, 431 (1977) does say that parents are obligated to child and county for support. However, we are unable to conclude from this case that the general obligation creates an assignable right in the absence of a support decree, because Crookham has to do with the obligations to the county of parents who have both deserted a child, not with the obligations of a noncustodial parent to the custodial parent or county when there is no dissolution decree. This latter situation, which obtains in the case at bar, is covered by O'Connell, 80 Cal.App.3d at 855, 146 Cal. Rptr. at 30, which says unless there is a dissolution decree and support order, the custodial parent bears full responsibility for support.

began receiving AFDC benefits, as a condition of which she assigned her right to support to the Illinois Department of Public Aid. Mr. Stovall never made any child support payments. When he filed for bankruptcy seven years after their divorce, he had accumulated arrearages of $16,690.00.

The critical issue before the court was whether Mr. Stovall would have to repay just the arrearages in support payments at the time of assignment or also those support payments which accrued after assignment. The Seventh Circuit held that the assignment under 42 U.S.C. § 602(a)(26) is of a continuing right and therefore includes support rights which continue as long as the family continues to receive assistance, thus covering both arrearages accrued at the time of assignment and support payments which

become due after assignment. Id. at 1135. It is clear this decision really focused on the continuing nature of a support obligation, not on defining how the obligation is initially created. However, on the facts of that case, the arrearage due at the time of assignment to Illinois as a condition of receipt of AFDC benefits, was arrearage accumulated "under the child support order." Id. at 1134. Mrs. Ramirez, by contrast, did not have any accrued arrearages to assign.

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Section 11350

We note that the County pursued its statutory right to reimbursement from Ramirez under Section 11350 of the California Welfare & Institutions Code.[4/] Because Mr. Ramirez's debt to the County arose from the operation of this statute and not from any right assigned by Mrs. Ramirez, the debt falls outside the scope of § 602(a)(26) and is

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4. Section 11350 of the California Welf. and Inst. Code (West 1980) provides that:

> In any case of separation or desertion of a parent or parents from a child or children which results in aid under this chapter being granted to such family, the noncustodial parent or parents shall be obligated to the county for an amount equal to . . . [in the absence of a court order specifying amount for support and maintenance of such family] [t]he amount of aid paid to the family during such period of separation or desertion limited by such parent's reasonable ability to pay during that period in which aid was granted.

therefore not subject to the nondischargeability provision of § 656(b). But see Oregon v. Richards, 45 B.R. 811 (D. Or. 1984) (legislative history indicates rights to be assigned under 602(a)(26) include obligations not yet reduced to form of a judgment, order, or agreement and fact that State recovers debt under statute rather than under guise of assignment is a technical distinction that does not affect dischargeability).

EQUITABLE CONSIDERATIONS

We are mindful of centrality of equitable concerns in all bankruptcy decisions. Our overriding goal is to leave Mr. Ramirez in a position to meet his current obligations to support his children. His children are certainly legally entitled to that support, and we do not wish our decision to be viewed as detracting from that right in any way.

Under California law a child has a right to support from his parents, and both parents have an equal responsibility to provide that support. Cal. Civ. Code §§ 196, 206, 242 (West 1982). Carr v. Marshman, 147 Cal.App.3d 1117, 1121, 195 Cal. Rptr. 603 (1983). This responsibility continues notwithstanding the parents' lack of custody. Armstrong v. Armstrong, 15 Cal.3d 942, 947, 126 Cal. Rptr. 85, 544, P.2d 941 (1976).

Mr. Ramirez has fully acknowledged his obligation to pay $250 a month for the support and maintenance of his children.

If we do not discharge his statutory obligation to reimburse the County, the default judgment in the County's section 11350 action would permit the County to garnish his wages. The practical effect would be to make it virtually impossible for Ramirez to meet his current support

obligations of $250 per month from his current income roughly $708 per month. When the choice lies between forcing a parent to pay a past statutory obligation to a County and permitting a parent to pay current support obligations to his children, equity and concern for the current welfare of the children require that we discharge the past obligation.

The judgment of the district court is AFFIRMED.

In re Ramirez; County of Santa Clara v. Ramirez, No. 84-2612

FERGUSON, Circuit Judge, dissenting:

The question before us is whether, in the absence of a court support order, Mrs. Ramirez had any rights to child support in her own behalf or in behalf of her children that had accured at the time she applied for and received AFDC. If she did, then the child support obligation was assigned to the County under section 602(a)(26) of Title 42 of the United States Code and is not dischargeable by virtue of section 656(b) of the same Title. Because it is clear that under California law a child has a right to support that can be assigned, and because the legislative history of sections 602(a)(26) and 656(b), as well as the plain language of section 656(a), indicate that the rights to be assigned under section 602(a)(26) include child support obligations that

have not yet been reduced to the form of a judgment, order, or agreement, I respectfully dissent.

I.

Congress specifically stated in the Social Services Amendments of 1974 that "[a] debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under Title 11." 42 U.S.C. § 656(b). Section 602(a) provides:

> A state plan for aid and services to needy families with children must . . .
>
> . . . .
>
> (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required--
>
> (A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have

> accrued at the time such assignment is executed 1/

The legislative histories of sections 602(a)(26) and 656(b) indicate that the rights to be assigned under section 602(a)(26) include child support obligations that have not yet been reduced to a judgment, order, or agreement. See S. Rep. No. 1356, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong & Ad News 8133, 8152. In discussing the assignment of family

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1. The mandate of section 602(a)(26) is implemented in California by Cal. Welf. & Inst. Code § 11477(a):

> As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall:
>
> (a) Assign to the county any rights to support from any other person such applicant may have in their own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at the time such assignment is made. Receipt of public assisance under this chapter shall operate as an assignment by operation of law....

support rights to the state as a condition of eligibility for child support, the Senate Committee Report expressly stated that:

> The support obligation would become a debt owed by the absent father to the State. The amount of this debt would be determined by a court order if one were in existence. In the absence of a court order the amount of the obligation would be an amount determined by the State in accordance with a formula approved by the Secretary of HEW. Also, a provision has been included to assure that the rights of the wife and child are not discharged in bankruptcy merely because the support obligation is a debt to the State.

Id. at 8153 (emphasis added). When Congress reinstated section 656(b) in 1981,[2/] the Committee Report stated:

> The committee amendment would . . . reinstate a provision of the Social Security Act, previously in effect, declaring that a child support obligation assigned to a State as a condition of AFDC eligibility is not discharged in bankruptcy. The

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2. Congress has repealed section 656(b) in 1978. Pub. L. No. 95-598, sec. 328, 92 Stat. 2549, 2679 (1978).

> committee believes that a parent's obligation to support his child is not one that should be allowed to be discharged by filing for bankruptcy, and that a child support obligation assigned to a State as a condition of AFDC eligibility should not be subject to termination in that way.

S. Rep. No. 139, 97th Cong., 1st Sess. 523, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 789-90.

In reinstating section 656(b), Congress reasserted its belief "that all children have the right to receive support from their fathers," S. Rep. No. 1356, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 8133, 8146, and its hope that legislation such as sections 602(a)(26) and 656(b) would encourage noncustodial parents to continue supporting their families, rather than deserting them to welfare, id.

Section 656(a) is further evidence that Congress intend the rights assigned

under section 602(a)(26) to include child support obligations not yet reduced to the form of a court order. Section 656(a) provides that the support rights assigned to the state under section 602(a)(26) constitute an obligation owed to the state by the individual responsible for the support and that the amount of that obligation is either:

> (A) the amount specified in a court order which covers the assigned support rights, or
>
> (B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary ....

Section 656(a) (emphasis added). The provision at issue here, section 656(b), states that such an obligation is not released by a discharge in bankruptcy. It is therefore clear that Mr. Ramirez's debt "is precisely the sort of debt intended to fall within the nondischargeability provision of section

656(b)." Oregon v. Richards, 45 B.R. 811, 816 (D. Ore. 1984).

III.

California law establishes that a child's rights to support are assignable to the county. California law provides that every child has a right to parental support and both parents have an equal responsibility to provide that support. Cal. Civ. Code §§ 196, 196a, 206, 242; see Carr v. Marshman, 147 Cal.App.3d 1117, 1121, 195 Cal. Rptr. 603, 606 (1983). The parents are obligated to the child and to the county for the child's support even in the absence of a dissolution decree ordering support payments. Crookham v. Smith, 68 Cal.App.3d 773, 777, 137 Cal. Rptr. 428, 431 (1977); Cal. Civ. Code § 208.

The responsibility to the child and to the county exists notwithstanding the parent's lack of custody, Armstrong v.

Armstrong, 15 Cal.3d 942, 947, 126 Cal. Rptr. 805, 807, 544 P.2d 941, 943 (1976): the absent parent has a continuing duty to support the child, Perez v. Singh, 21 Cal.App.3d 870, 872, 97 Cal. Rptr. 920, 921 (1971). Indeed, "[p]arental liability for support of a minor child is of ancient origin." County of Alameda v. Kaiser, 238 Cal.App.2d 815, 817, 48 Cal. Rptr. 343, 345 (1965). A minor child may sue "in his own name for support." Amie v. Superior Court, 99 Cal.App.3d 421, 426, 160 Cal. Rptr. 271, 273 (1979).

In sum, the child has clear and definite rights to support under California law. Section 602(a)(26) (as well as Cal. Welf. & Inst. Code § 11477(a)) allows the assignment of such rights that have accrued at the time of the assignment. "The word 'accrue' is defined as '1: to come into existence as a legally enforceable claim[;] 2: to come

by way of increase or addition[;] 3: to be periodically accumulated whether as an increase or a decrease.'" In re Marriage of Shore, 71 Cal.App.3d 290, 295 n.3, 139 Cal. Rptr. 349, 353 n.3 (1977) (quoting Webster's New Collegiate Dictionary 6 (7th ed. 1971)). The phrase "which have accrued at the time the assignment is executed" in section 602(a)(26), coupled with (1) section 656(a)'s method of determining the amount of the child support obligation assigned under section 602(a)(26) in the presence or absence of a court support order and (2) California's definition of "accrue," reinforces the conclusion that Mr. Ramirez's debt was assigned to the county.

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IV.

In addition to ignoring clear congressional intent, the majority's opinion creates a conflict with other circuit decisions. The Seventh Circuit, when addressing the same issue decided in this appeal, concluded that such a debt was nondischargeable in bankruptcy. In re Stovall, 721 F.2d 1133 (7th Cir. 1983). In that case, Mrs. Stovall received AFDC payments beginning in 1974. Id. at 1134. No formal order was entered until 1975, id., but the court held that no AFDC payments were dischargeable in bankruptcy, including those prior to the order, id. Thus, the majority is incorrect when it states that Stovall found nondischargeable only those amounts arising pursuant to a court order. Stovall is, in that respect, indistinguishable from the case before

us. In light of Congress' clear intent, I would join with the Seventh Circuit and reverse the district court.

APPENDIX B

ORDER DENYING PETITION
FOR REHEARING

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	NO. 84-2612 D.C.# CV84-0719 SC
COUNTY OF SANTA CLARA, Appellant, v. JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ, Appellees.	ORDER DENYING PETITION FOR REHEARING

Before: TANG, and FERGUSON, Circuit Judges, and GRAY,* District Judge.

Judges Tang and Gray vote to deny the Petition for Rehearing. Judges Ferguson votes to grant the Petition.

It is so ordered that the Petition for Rehearing is denied.

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* Honorable William P. Gray, Senior United States District Judge, for the Central District of California, sitting by designation.

APPENDIX C

JUDGMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ, SS# 545-25-0501	Bankruptcy No: 3-82-00594W-JR
Debtor.	
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	
Plaintiff,	Adversary Proceedings
-vs-	No: 3-82-0678-LK
COUNTY OF SANTA CLARA,	
Defendant.	
COUNTY OF SANTA CLARA,	
Appellant,	No: C-84-0719-SC
-vs-	JUDGMENT
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	
Appellee.	

It is hereby ordered, adjudged and decreed that the decision of the Bankruptcy Court in this matter is

affirmed, in accordance with the order entered by this court herein.

DATED: September 28, 1984.

_____

United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ, SS# 545-25-0501	Bankruptcy No: 3-82-00594W-JR
Debtor.	
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	
Plaintiff,	Adversary Proceedings
-vs-	No: 3-82-0678-LK
COUNTY OF SANTA CLARA,	
Defendant.	
COUNTY OF SANTA CLARA,	
Appellant,	No: C-84-0719-SC
-vs-	ORDER RE APPEAL
JOE P. RAMIREZ, JOSE PRESIADO RAMIREZ,	
Appellee.	

Appellant County of Santa Clara ("County") brings this action pursuant to Bankruptcy Rule 8001 to appeal a

judgment entered in bankruptcy court in favor of appellee Joe P. Ramirez, Jose Presiado Ramirez ("Ramirez") and adverse to the County.

The parties agree that the issue to be decided by the court is whether a judgment for reimbursement of child support expended pursuant to Cal. Welf. & Inst. Code § 11350 is a debt which is assigned to the County and is thus not dischargeable in bankruptcy.

The parties both state that the standard of review to be applied is that of Bankruptcy Rule 8013, which provides that findings of fact shall not be set aside unless they are determined to be clearly erroneous. The court disagrees. Because the parties present the court with identical statements of fact, determined by the bankruptcy court and the procedural history of the case, and because the court then only needs to

determine the legal issues of whether Ramirez's debt is or is not discharged according to the bankruptcy laws, the court will review the bankruptcy court's conclusions of law and not its factual findings. Consequently, the appropriate standard of review is that the bankruptcy court's conclusions of law are freely reviewable by the court on appeal. Matter of Multiponics, 622 F.2d 709 (5th Cir. 1980).

On September 4, 1980, the County filed a compliant against Ramirez seeking reimbursement for AFDC payments the County had provided Mrs. Ramirez and their children. After plaintiff failed to appear or answer, a default judgment was entered, which ordered Ramirez to pay $250 a month child support, commencing January 1, 1981. The court also ordered Ramirez to pay the County $14,750, which represented the amount AFDC paid Mrs. Ramirez between November,

1977 and January, 1981. On April 2, 1982, Ramirez filed a petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.). On April 16, 1982, Ramirez received a discharge of all dischargeable debts.

On July 12, 1982, Ramirez filed in the bankruptcy court a complaint to determine dischargeability of debt, pursuant to Bankruptcy Rules 409 and 701(7), against the County. The complaint alleged that on April 2, 1982, Ramirez filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, that the County was a creditor of Ramirez in the sum of $14,825 plus interest from the date of judgment (April 14, 1981), that the judgment was based on Cal. Welf. & Inst. Code § 11350 and represented expenditures made between November, 1977 and January, 1981, and that the debt was founded on a claim from

which a discharge in bankruptcy would be a relief.

On October 4, 1982, the County's notice of motion and motion to permit late filing of answer and answer were filed, and on November 1, 1982, Ramirez filed a statement of no opposition. The bankruptcy court's order of dismissal through Ramirez's default was filed on November 24, 1982, and set aside on stipulation of the parties on March 4, 1983.

On April 25, 1983, the County filed points and authorities in support of motion for summary judgment. Ramirez filed his points and authorities in support of motion for summary judgment on May 11, 1983, and the County filed a response on May 23, 1983. Hearing was held on June 3, 1983, and on September 28, 1983, the bankruptcy court filed its order discharging the debt and

granting Ramirez's motion for summary judgment. Notice of Appeal was filed on October 4, 1983.

The County alleges that the bankruptcy court below misinterpreted California law by holding that the debt, which is to be collected pursuant to Cal. Welf. & Inst. Code § 11350, was not one which was assigned to the state and was thus dischargeable in bankruptcy. Section 11350 provides that when no court has ordered a non-custodial parent to pay alimony or child support, this parent shall fully reimburse a county for AFDC provided to his or her family. However, the parents total obligation under section 11350 is reduced by the amount of any support the parent has given his or her family, and is limited by his or her ability to pay.

The bankruptcy court recognized that Ramirez admitted that his obligation

to pay $250 a month for direct support of his children was not discharged by his bankruptcy, and that Ramirez only sought to discharge his $14,750 debt to the County for reimbursement of AFDC payments. In bankruptcy court Ramirez contended that 11 U.S.C. § 523(a)(5) did not except the AFDC debt from discharge because the debt was unconnected with any separation agreement, divorce decree, or property settlement. The County argued that 42 U.S.C. § 656(b) excepts from discharge Ramirez's debt to the County for reimbursement of AFDC. Section 656(b) states that "A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under Title 11." The bankruptcy court held that section 656(b) makes nondischargeable only child support debts assigned to a state

pursuant to section 602(a)(26), and concluded that Ramirez's obligation to the County arose under Cal. Welf. & Inst. Code § 11350 and not under 42 U.S.C. § 602(a)(26) or its state law counterpart, Cal. Welf. Inst. Code § 11477. Accordingly, the bankruptcy court determined that Ramirez's debt was not excepted from discharge pursuant to 42 U.S.C. § 656(b).

To determine whether Ramirez's debt was nondischargeable the court must begin by focusing on 11 U.S.C. § 523(a)(5)(A). For a debt to be considered nondischargeable under this section it must be: 1) owed to a spouse, former spouse, or child of the debtor; 2) be in connection with a separation agreement, divorce decree, or property settlement; and 3) the debt must be assigned to another entity pursuant to 42 U.S.C. § 602(a)(26). The court concludes

that the County has not established that any of these three requirements are met in this case, and consequently, Ramirez's debt is discharged.

The case Amie v. Superior Court, 99 Cal.App.3d 421 (1979), establishes that Ramirez's debt was not owed to Mrs. Ramirez or his children, but that the debt was owed to the County, pursuant to Cal. Welf. Inst. Code § 11350. Although Amie is not factually on all fours with the present action, as the Amie court addressed the issue of whether a statute of limitations applied to a debt owed to a county for support of minor children when the support was rendered prior to any court order or agreement issued for support, the Amie court nevertheless enunciated principles of law that are directly applicable to this case. The county in Amie claimed, as the County

asserts in this case, that the child support debt derived "by way of assignment . . . from the child's right of action against her parent for support." Id. at 425. However, the Amie court distinguished between a debt arising by right of assignment from the child and a debt arising from a county's right to reimbursement under section 11350. The Amie court held that in the absence of a court order or agreement for child support, neither the custodial parent nor the child had a right to reimbursement for monies expended for past support, and that their only right was to obtain a court order for present and prospective support. Id. at 425, 426. The Amie court stated in relevant part that:

> Although the county insists that the right to obtain reimbursement for support furnished to a child is well-established and of ancient

> origin, we have found no case in which a non-custodial parent has been required to reimburse another for support furnished to a child in the absence of an order or agreement. It is established that a "mother cannot claim reimbursement for money paid out in support of a child prior to an order of the court directing the father to pay support to meet the current needs of the child." (Citation omitted).

From Amie, the court concludes that even though the County had a right to reimbursement for past expenditures to Mrs. Ramirez and the children, that right derived from section 11350 and not from the notion that Ramirez owed Mrs. Ramirez and the children money prior to the support order.

The court further concludes that the County has not satisfied the second requirement of 11 U.S.C. § 523(a)(5)(A). The support obligation did not arise from a settlement agreement, divorce decree, or property

settlement. Ramirez's debt instead arose from the County's statutory rights under Cal. Welf. & Inst. Code § 11350.

Finally, the County does not fulfill the third requirement of 11 U.S.C. § 523(a)(5)(A), in that it has not been established that Ramirez's debt was assigned to the County pursuant to 42 U.S.C. § 602(a)(26). Section 602(a)(26)(A) provides:

> A State plan for aid and services to needy families with children must . . . provide that, as a condition of eligibility for aid, each applicant or recipient will be required . . . to assign to the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed." (Emphasis added).

As Amie makes clear, neither Mrs. Ramirez nor the children had a right

to support from Ramirez prior to a court order to that effect. Consequently, when Mrs. Ramirez and the children received $14,750 in AFDC payments from November, 1977 until January, 1981, they did not assign accrued rights to support to the County according to section 602(a)(26)(A), because no court order existed at that time establishing that Ramirez was obligated for that amount. The only right assigned to the County was the right to obtain an order for continuing support. Thus, the third prong of 11 U.S.C. § 523(a)(5)(A) is not satisfied.

Because Ramirez's debt to the County does not fit within the three requirements of section 523(a)(5)(A), the debt was correctly discharged by the bankruptcy court.

In accordance with the foregoing, the decision of the bankruptcy court in this matter is affirmed.

DATED: September 28, 1984.

_____

United States District Judge

APPENDIX D

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND JUDGMENT

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	)	Chapter 7
	)	
JOE P. RAMIREZ,	)	Case No.
JOSE PRESIADO RAMIREZ,	)	3-82-00594-W-JR
	)	
Debtor.	)	
	)	
	)	
JOE P. RAMIREZ,	)	
JOSE PRESIADO RAMIREZ,	)	Adversary
	)	Proceeding
Plaintiff,	)	No. 3-82-0678 LK
	)	
v.	)	
	)	
COUNTY OF SANTA CLARA,	)	
	)	
Defendant.	)	
	)	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND JUDGMENT

Pursuant to the opinion filed this date, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's debt to the County of Santa Clara is dischargeable in bankruptcy.

2. Plaintiff's motion for summary judgment is granted.

3. Defendant's cross-motion for summary judgment is denied.

DATED: September 28, 1983.

LLOYD KING
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	)	Chapter 7
	)	
JOE P. RAMIREZ,	)	Case No.
JOSE PRESIADO RAMIREZ,	)	3-82-00594-W-JR
	)	
Debtor.	)	
	)	
	)	
JOE P. RAMIREZ,	)	
JOSE PRESIADO RAMIREZ,	)	Adversary
	)	Proceeding
Plaintiff,	)	No. 3-82-0678 LK
	)	
v.	)	
	)	
COUNTY OF SANTA CLARA,	)	
	)	
Defendant.	)	
	)	

OPINION

This adversary proceeding seeks to determine the dischargeability of plaintiff's obligation to reimburse defendant ("county") for public assistance provided plaintiff's wife and children from November 1977 to January 1981. Cross-motions for summary

judgment were filed, and a hearing was held on June 3, 1983.

The parties do not dispute the underlying facts. In February 1973 plaintiff and Yolanda Ramirez were married. Mrs. Ramirez gave birth to two children before the couple separated in July 1977. Mrs. Ramirez never sought a court order for alimony or child support.

In December 1979, Mrs. Ramirez requested Aid for Families with Dependent Children (AFDC) from the county. As required by California law, she assigned to the county all rights to financial support from plaintiff that she held for herself or for her children.

On September 4, 1980, the county filed a complaint against plaintiff seeking reimbursement for AFDC the county had provided Mrs. Ramirez and her children. After plaintiff failed to

appear or answer, a default judgment was entered ordering plaintiff to pay $250 a month child support commencing January 1, 1981. The court also ordered plaintiff to pay the county $14,750, representing the amount of AFDC paid Mrs. Ramirez between November 1977 and January 1981.[1/]

On April 2, 1982, plaintiff filed a petition under Chapter 7 of the Bankruptcy Code. 11 U.S.C. § 701 et seq. On April 16, 1982, plaintiff received a discharge of all dischargeable debts.

Plaintiff concedes that his obligation to pay $250 a month for the direct support of his children is not

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1. Although the Superior Court judgment refers to payments made as early as November 1977, Mrs. Ramirez did not seek AFDC until December 1979. The parties have not explained this discrepancy.

discharged by his bankruptcy. Rather, plaintiff seeks to discharge his $14,750 debt to the county for reimbursement of AFDC. Plaintiff argues that 11 U.S.C. § 523(a)(5) does not except the AFDC debt from discharge because the debt is unconnected with any separation agreement, divorce decree, or property settlement agreement.[2/]

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2. "(a) A discharge under section 727 . . . of this title does not discharge an individual from any debt . . . .

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or property settlement, but not to the the extent that . . . .

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts pursuant to Section 402(a)(26) of the Social Security Act) . . . ."
(11 U.S.C. § 523(a)(5))

(FOOTNOTE 2 CONTINUED ON NEXT PAGE)

OPINION

Section 523(a)(5) is drafted more narrowly than preceding legislation, § 17a(7) of the former Bankruptcy Act, 11 U.S.C. § 35a(7), repealed as of October 1, 1979. Section 17a(7) excepted from discharge all debts "for maintenance or support of wife or child" without reference to how the debts arose. Consequently, some courts held that even common law liability involuntarily imposed upon a parent for support of a child was nondischargeable in bankruptcy. In re Meyers, 12 F.2d 938 (W.D.N.Y. 1926) (husband not discharge from debt to creditor who supported debtor's abandoned wife, even

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(FOOTNOTE 2 CONTINUED):

Emphasis indicates language added by an amendment to 11 U.S.C. § 523(a)(5)(A) contained in § 2334(b) of Title XXIII of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, effective August 13, 1981.

though debtor told creditor that such support would not be reimbursed). Section 523(a)(5), on the other hand, excepts a child support obligation from discharge only if it is owed "in connection with a separation agreement, divorce decree, or property settlement agreement." As the editors of Colliers on Bankruptcy note:

> "This qualifying clause did not appear in section 17a(7) of the Bankruptcy Act, and represents a significant change . . . . The provisions of section 523(a)(5) are clear that liability for maintenance and support are (sic) dischargeable unless the liability arises in connection with a separation agreement, divorce decree, or property settlement agreement."
>
> 3 Colliers on Bankruptcy, 523.15, at p. 523-111 (15th ed. 1982), cited with approval in In re Leach, 15 B.R. 1095 (Bankr. D.Conn. 1981).

Plaintiff's obligation to the county is unconnected with a separation agreement,

divorce decree or property settlement agreement. In fact, no such agreements exist. Rather, plaintiff's debt arose when the county provided public assistance to his wife and children. Cal. Welf. & Inst. Code § 11350 (West 1983).[3/] Such an obligation is not excepted from discharge by § 523(a)(5) of the Bankruptcy Code.

Defendant argues that the 1981 amendment to § 523(a)(5)(A) evidences congressional intent to make nondischargeable all debts for maintenance and support arising from

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3. Where no court has ordered a non-custodial parent to pay alimony or child support, Cal. Welf. & Inst. Code § 11350 requires the parent to fully reimburse a county for AFDC provided his/her family. The parent's total obligation is both reduced by the amount of any support the parent has given his/her family and limited by his/her ability to pay.

public assistance programs.[4] However, no such interpretation can be given the amendment, particularly since provisions of the Bankruptcy Code excepting debts from discharge should be liberally construed in favor of the debtor. See, e.g., Gleason v. Thaw, 236 U.S. 558, 562; 35 S.Ct. 287, 289; 59 L.ed. 717, 719 (1915). Section 523(a)(5)(A), as amended, still provides that child support debts unconnected to any decree or agreement are dischargeable whether assigned or not. In re Leach, 15 B.R. 1005 (Bankr. D.Conn. 1981).

The defendant argues that a separate law, 42 U.S.C. § 656(b),[5] added

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4. See footnote 2, supra.

5. "(a) . . . .

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under Title 11." (42 U.S.C. § 656(b))

when § 523(a)(5)(A) was amended in 1981, excepts from discharge plaintiff's debt to the county for reimbursement of AFDC. However, § 656(b) is also narrowly worded. The new legislation makes nondischargeable only child support debts assigned to a state pursuant to 42 U.S.C. § 602(a)(26).[6/] Plaintiff's obligation to defendant arose under Cal. Welf. & Inst. Code § 11350, not 42 U.S.C. § 602(a)(26) or its State law

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6. "(a) A State plan for aid and services to needy families with children must . . . .

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required . . . .

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed . . . ." (11 U.S.C. § 602(a)(26))

counterpart, Cal. Welf. & Inst. Code § 11477.7/ To arise under § 11477, plaintiff's debt must have accrued before Mrs. Ramirez applied for AFDC, since § 11477 requires a recipient to assign only those rights to support "which have accrued at the time such assignment is executed." Under California law, however, a wife may sue her husband for prospective support only; a spouse has no right to sue for reimbursement of support furnished a child in the absence of a court order or agreement between the parties. Amie v. Superior Court of Riverside County, 99 Cal.App.3d 421, 425 (1979).

Thus, at the time Mrs. Ramirez applied for AFDC, she assigned to

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7. Cal. Welf. & Inst. Code § 11477 was enacted to comply with the requirements of 42 U.S.C. § 602(a)(26). The language of the State law is identical to the language of § 602(a)(26).

defendant merely a right to seek a court order establishing support, and not a right to reimbursement for past support. Consequently, plaintiff's debt to the State arose by operation of Cal. Welf. & Inst. Code § 11350, rather than by his wife's assignment pursuant to Cal. Welf. & Inst. Code § 11477 or 42 U.S.C. § 602(a)(26).

Defendant asserts that such a literal reading of 42 U.S.C. § 656(b) ignores the intention of Congress that all child support obligations to a state should be nondischargeable, regardless of how the debts arise. However, defendant has not cited any authority for its version of legislative history. Nor has the county explained why an admittedly ambiguous statute should be construed against the debtor. Davison-Paxon Co. v. Caldwell, 115 F.2d

189 (5th Cir. 1940), cert. denied, 313 U.S. 564, 85 L.ed 1523, 61 S.Ct. 841 (1941) (discharge provisions must be "construed strictly so that all debts except those coming exactly within the exception stand discharged.")

Admittedly, certain public policy considerations weigh in favor of exempting all AFDC-related child support obligations from discharge. Williams v. Dept. of Soc. & Health Services, State of Washington, 529 F.2d 1264 (9th Cir. 1976). Parents should not be allowed to escape easily the moral and legal obligation to support and educate their children. Also, the collection of child support arrearages benefits a state's AFDC program generally by offsetting the escalating costs of providing for the state's needy families (Id. at p. 1271).

Such policies, however, will not be significantly restrained by a

decision in this proceeding in favor of plaintiff. Plaintiff seeks to avoid only his obligation to the county for AFDC benefits paid his family before the entry of a court order against him. Plaintiff's obligation to pay monthly support commencing January 1, 1981, as well as his obligation to pay all arrearages arising after January 1, 1981, remain exempt from discharge.

The distinction drawn between a dischargeable statutory obligation to reimburse past child support and a nondischargeable court-ordered obligation to pay future child support is fair. The former debt can arise without notice to or consent from the non-custodial parent. For example, a custodial parent may choose to leave the home, take the children, and apply for AFDC. The non-custodial parent may be

completely unaware of the fact that he or she is incurring a steadily growing obligation to reimburse the state. If the state neglects to obtain an order of support and chooses instead to sue several years later for reimbursement of AFDC benefits, the sudden burden of a large and unexpected liability is often too great for a debtor to bear.

Plaintiff's case is illustrative. Shortly after the county garnished his wages for reimbursement of AFDC benefits, plaintiff filed his Chapter 7 petition. The petition lists four creditors: one secured creditor owed $563.00, plaintiff's attorney owed $226.58, plaintiff's former wife owed $3,750.00 for child support, and defendant owed $14,825.00. Plaintiff's schedules reveal he owns no real property and only $1,317 worth of personal

property. He earned less than $17,000 during the two years preceding his bankruptcy. Under such circumstances it appears that plaintiff was reasonably current in payment of those debts of which he was aware.

Defendant could have avoided such an imposition had it sought a court order when it began providing AFDC to plaintiff's family in 1977. In seeking such an order a county need not name the custodial parent as a necessary party, and trial must proceed despite the existence of various disputes between the parents. The issues in such an action are strictly limited to the obligation to pay child support. Cal. Welf. & Inst. Code § 11350.1. Thus, the county may avoid the subsequent discharge of a reimbursement obligation by securing an order of support at the

earliest possible date. Such action will also give the non-custodial parent notice and an opportunity to pay the obligation as it accrues.

For the foregoing reasons, an order will be entered determining the debt in question to be dischargeable, granting plaintiff's motion for summary judgment, and denying defendant's cross-motion for summary judgment.

DATED: September 28, 1983.

LLOYD KING
Bankruptcy Judge

Supreme Court, U.S.
FILED
MAR 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 86-1030

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

COUNTY OF SANTA CLARA, Petitioner,

v.

JOE P. RAMIREZ, Respondent.

On Petition For A Writ Of Ceriorari To The United States Court Of Appeals For The Ninth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

MARY ELIZABETH SHEAHAN REISS
2395 Broadway, #3
Redwood City, California 94063
(415) 366-0135
Attorney for Respondent

QUESTIONS PRESENTED

1. Whether Section 656(b) of 42 U.S.C. creates a definition of a debt not dischargeable in bankruptcy separate and independent from the definitions of debts deemed non-dischargeable in bankruptcy by section 523 of 11 U.S.C.

2. If Section 656(b) creates an independent and separate definition of a non-dischargeable debt, does a California debt for reimbursement of AFDC constitute "a debt which is a child support obligation assigned to the state" by the aid applicant or recipient, where California law holds that in the absence of a prior court order for support, a debt for reimbursement to the state for AFDC funds expended arises from statute and not from assignment from the aid-recipient parent or child.

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No. 86-1030

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

COUNTY OF SANTA CLARA, Petitioner,

v.

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On Petition For A Writ Of Ceriorari To The United States Court Of Appeals For The Ninth Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Joe P. Ramirez, respectfully prays that Petitioner, County of Santa Clara's, Petition for writ of certiorari to review the judgment and opinion of the United Sates Court of Appeals for the Ninth Circuit entered on August 4, 1986, be denied.

OPINIONS BELOW, JURISDICTION, STATUTES INVOLVED AND STATEMENT OF THE CASE

Respondent concurs with Petitioner's statement of the Opinions Below,

Jurisdiction, Statutes Involved and Statement of the Case.

REASONS FOR DENYING THE WRIT

A. THE OPINION OF THE NINTH CIRCUIT DOES NOT CREATE A CONFLICT AMONG CIRCUIT COURT OPINIONS

There is no conflict between the Ninth Circuit opinion in this matter *[In re Joe P. Ramirez* 795 F.2d 1494 (9th Cir. 1986)] and the opinion of the Court of Appeals for the Seventh Circuit *In re Stovall* [721 F.2d 1133 (7th Cir. 1983)]. *Stovall* resolved the issue of whether an assignment to the state of child support debts pursuant to the Social Security Act by a parent receiving AFDC, includes rights to support payments which become due after the assignment as well as arrearages accrued at the time of the assignment. The Bankrupt-Appellant Stovall argued that "...all that is assigned pursuant to [42 U.S.C. § 602(a)(26)] are those sums which are in arrears at the time the aid recipient makes an assignment to the state agency." Id. at 1135. Thus, the Seventh Circuit focused on the issue of whether

the aid recipient's assignment was effective as to all rights to support which she acquired while on AFDC, or was limited to those rights which she or her child had at the time of the initial assignment.

The Seventh Circuit Court reviewed the Senate Finance Committee report on the bill implementing 42 U.S.C. § 656(b) and concluded "There is no expression of Congressional intent to limit the assignment to amounts in arrears at the time of the assignment." 721 F.2d at 1135. *Stovall* did not address the issue of the distinction between the statutory right of the state for reimbursement of aid, and the aid recipient's assigned right to collect support arrears accrued pursuant to a court order, so it cannot stand for the proposition that there is no such distinction.

The Ninth Circuit Court considered *Stovall* and rejected the contention, raised in Circuit Judge Ferguson's dissent, that *Stovall* addressed the same issue raised in *In re Joe P. Ramirez.* Thus, *Stovall* and the Ninth Circuit

opinion in this matter are not in conflict.

B. DISCHARGE IN BANKRUPTCY OF DEBTS TO THE STATE CREATED SOLELY BY STATUTE WHICH DO NOT ORIGINATE AS A DEBT TO THE MOTHER OR CHILD IS NOT CONTRARY TO LEGISLATIVE INTENT

Section 456(b) of the Social Security Act [42 U.S.C. 656(b)] was enacted in 1974, repealed in 1978 (P.L. 95-598 sec. 328), and reinstated by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35 sec. 764). In enacting this section, Congress created a protection against bankruptcy for the benefit of the custodial parent, not the state. The Senate Committee Report, in its discussion of the creation of a debt for reimbursement for AFDC, stated that "...a provision has been included to assure that the *rights of the wife and child* are not discharged in bankruptcy merely because the support obligation is a debt to the State." S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Cong. & Ad. News 8133, 8153(emphasis added).

Amendments consistent with the congressional intent to protect the wife and child were made in conjunction with the amendment to the Social Security Act re-enacting 656(b). The amendment of the section of the Bankruptcy Act which lists the exceptions to dischargeable debts left intact the requirement that to be non-dischargeable, the debt must be "...to a spouse, former spouse, or child of the debtor,...in connection with a separation agreement, divorce decree, or property settlement agreement...." United States code, Title 11, Section 523(a)(5). *See amendment in* Pub. L. No. 97-35, *reprinted in* 1981 U.S. Code Cong. & News 95 Stat. 357, 863.

The need for such protection for the custodial parent is obvious: if rights to accrued support are assigned to the state by a parent, and collection on the debt by the state exceeds the amount of AFDC paid to that parent, the balance belongs to the assignor. *See* S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Cong. & Ad. News

8133, 8158. Without the exception to dischargeability in 523(a)(5), the assignor parent could loose the right to collect the amount in excess of reimbursement merely because the debt was assigned to the state; a loss which she would not have incurred had she not received AFDC.

However, when the debt never was one owed to the mother or child, but rather was a statutory right to reimbursement originating with and owned exclusively by the state, the debt is of an entirely different nature. The loss from its discharge in Bankruptcy is felt not by an individual, but is absorbed by the state. Moreover, although a secondary goal of the congressional support collection scheme is lowering welfare costs (*See* S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad. News 8133, 8146), the loss of reimbursement through bankruptcy would be limited by the very nature of bankruptcy proceedings. Only a person of limited resources and one against whom a sizable debt to the state had

accumulated prior to a court order would benefit from the disruption and economic onus of bankruptcy. It is not the "...well-off doctors and lawyers whose families are forced into welfare..." (*Id.* at 8147) who would avail themselves of the bankruptcy proceeding, but rather a desperate debtor such as Respondent, for whom the liability to the state proves an overwhelming burden. Congress did not re-enact 656(b) to preclude discharge of the reimbursement debt in these limited cases, but rather to protect the meager assets of the aid recipients.

C. EQUITABLE CONSIDERATIONS DICTATE THAT A DEBT TO THE STATE CREATED WITHOUT BENEFIT OF A PRIOR COURT ORDER BE DISCHARGEABLE IN BANKRUPTCY

There is a marked difference, from the debtors viewpoint, between a debt which accrues pursuant to a prior court order, and a debt which accrues by operation of law pursuant to a statutory right granted the creditor. In the former instance, as with any court order, the debtor is given notice before

the creation of the obligation, is most likely aware of the significance of the court proceeding, and need only appear to provide easily accessible information regarding his current earnings and expenses.

Where the debt arises out of statute, the debt can accrue without the knowledge of the debtor. The custodial parent may obtain AFDC without notice to the other parent and, in fact, may have refused any financial support from the "absent parent" in conjunction with denying him access to his children. The absent parent may not even know the whereabouts of the "abandoned" custodial parent and children, let alone that he is accruing an obligation to the state. When a court finally determines the size of the debt for past support, the debtor may have to reconstruct years of information in regard to income and expenses and periods of illness or unemployment. He may be completely without resources to hire an attorney to represent him, while the creditor, the

state, has all of its powerful legal resources to further its cause.

The result can be what occurred in Respondent's case. At the time of filing his petition in bankruptcy, Respondent owned $1,317.00 worth of personal property; owed one secured debtor $563.00, his attorney $226.58, and his former wife $3,750.00 for child support accrued after the court order. He owed the County of Santa Clara $14,825.00. His total gross income for the two year period prior to filing the petition was less than $17,000.00. (DOC. NR. 28; ER 14; Pet. App. D at 8.) As the Bankruptcy Court and the Ninth Circuit pointed out, collection of the debt to the state would have only hampered Respondent's ability to meet his obligation to his children for current support. [(DOC. NR. 28; ER 14-15; Pet. App. D at 8) (795 F.2d at 1498-1499, Pet. App. A at 10-11.)]

CONCLUSION

The decision of the Court of Appeals in this matter creates no conflict among the circuit courts. Its

application is limited to those few parents, such as Respondent, who bankruptcy was designed to assist. It leaves intact the protection against bankruptcy for those debts for support owed to the aid recipient, whether assigned or not. Respondent respectfully urges the court to deny Petitioner's request that certiorari be granted.

Resectfully submitted,

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